



May 19, 2011

Attention: Wind Energy Guidelines  
Division of Fisheries and Habitat Conservation  
U.S. Fish and Wildlife Service  
4401 North Fairfax Drive, Mail Stop 4107  
Arlington, VA 22203-1610

RE: Wind Energy Guidelines Comments

**SENT VIA EMAIL TO [windenergy@fws.gov](mailto:windenergy@fws.gov)**

To Whom It May Concern:

Thank you for the opportunity to provide comments on the Draft Voluntary, Land-Based Wind Energy Guideline (hereinafter “the Guidelines”). Public Employees for Environmental Responsibility (PEER) is a Washington D.C.-based non-profit, non-partisan public interest organization concerned with honest and open government. Specifically, PEER serves and protects public employees working on environmental issues. PEER represents thousands of local, state and federal government employees nationwide; our New England chapter is located outside of Boston, Massachusetts. PEER has several comments on the Guidance, which are set forth below.

**The Guidelines should be mandatory, not voluntary.** Making the Guidelines voluntary rather than mandatory renders them meaningless. We are also concerned about the following U.S. Fish and Wildlife Service (USFWS) statement:

The Service urges voluntary adherence to the draft Guidelines and communication with the Service when planning and operating a facility. Service will regard such voluntary adherence and communication as evidence of due care with respect to avoiding, minimizing, and mitigating adverse impacts to species protected under the MBTA and BGEPA, and will take such adherence and communication fully into account when exercising its discretion with respect to any potential referral for prosecution related to the death or injury to any such species (Guidelines, p. 13).

PEER is very concerned about this implication that the USFWS will forebear from prosecuting anyone who volunteers to implement these Guidelines and then takes species protected under the MBTA or BGEPA. Because the Guidelines are discretionary and somewhat vague, it would be relatively easy for a wind energy proponent to “adhere” to these Guidelines, yet end up with a project that would result in the injury or death of protected species. Since these Guidelines are not a guarantee that a project following these Guidelines will be benign, PEER believes that a better course of action would be to modify projects that take protected species rather than decline to prosecute illegal activities.

**Scientific rigor should be the rule, not the exception.** Page 3 of the Guidelines states that the Guidelines are intended to “encourage scientifically rigorous survey, ‘monitoring,’ ...assessment, and research designs proportionate to the ‘risk’ to ‘affected species.’” PEER is very concerned that the USFWS is proposing that scientific rigor be commensurate with the risk to species. First, scientific rigor should be required in every aspect of surveys, monitoring, assessment and research. Without scientific rigor, it would not be science. Second, it is impossible to assess the risk to a species without scientific rigorous assessments. Therefore this reasoning is circular and non-sensical. PEER urges USFWS to require scientifically rigorous evaluation at every step in their proposed tiered process.

**The government must be proactive, not reactive.** Page 38 of the Guidelines state that “three years of pre-construction studies *may* be appropriate in many circumstances” (emphasis added). The Guidelines then go on to qualify this statement, implying that certain sites may need more than three years of pre-construction monitoring. If an applicant wants to build a wind facility, a minimum of three years of pre-construction monitoring is expensive. PEER has seen applicants dig their heels in on many projects, for construction in completely unsuitable sites, simply because they have spent so much money determining whether that site would work. Once a critical amount of money is spent, an applicant will do everything it can to keep that site viable. Since three years of pre-construction monitoring may not be enough for some sites, it is critical that the USFWS take the lead and designate unacceptable sites for wind development, and sites that *may* be appropriate. Theoretically, the list of unacceptable sites would be large, but

would include migratory flyways and other sensitive areas. Without this type of proactive approach, we are dooming ourselves to situations where applicants spend years of time and large amounts of money only to find that their site is not appropriate for wind.

**The decision-maker as to whether to abandon or move forward with a particular site is unclear.** Page 16 of the Guidelines states that if sufficient data are available at any particular tier, “the risk [can be] considered unacceptable” and the project abandoned. It is not clear who makes that determination, but it is highly unlikely that the applicant would be making that determination.

**All necessary data must be collected before a site is chosen.** USFWS cautions that limited data should not be used to make decisions that will affect the long-term. However, it then goes on to say that “rather than delaying decisions until all necessary data are available,” the applicant may simply consider uncertainties and risks, and demonstrate that an action is not harmful (Guidelines, p. 19). If data are “necessary” to make a decision about effects on protected species, then a consideration of uncertainties and risks is not adequate. How can an applicant demonstrate that there will be no harm if the necessary data are not available? USFWS should change this section to require collection of all necessary data before any decisions are made.

**Conclusion.** USFWS concedes that “[a]dditional research is needed to improve science-based decision making regarding siting wind energy facilities, evaluating effects on wildlife and habitats, and testing the efficacy of mitigation measures” (Guidelines, page 20). PEER agrees. However, given this lack of information, PEER is concerned about the issuance of voluntary Guidelines that encourages applicants to spend several years and countless dollars investigating sites that may end up to be unpermittable. Moreover, we believe these draft Guidelines do not require enough scientific rigor, and may lead to incorrect decisions that result in adverse effects to protected species. As such, PEER urges USFWS to make mandatory Guidelines for the siting of these facilities, proactively find sites that are more likely to be appropriate for wind energy, and require the best possible science in all decision-making.

Thank you for the opportunity to comment.

Sincerely,

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